



State of New Hampshire
Public Employee Labor Relations Board

Keene Education Association, NEA-NH

v.

Keene School District

Case No. E-0120-6

Decision No. 2018-091

Pre-Hearing Memorandum and Order

Date of Conference: June 29, 2018

Appearances: Lauren Snow Chadwick, Esq., for the Complainant

Matthew Upton, Esq., for the Respondent

Background:

On May 29, 2018, the Keene Education Association, NEA-NH (Association) filed an unfair labor practice complaint under the Public Employee Labor Relations Act asserting that the Keene School District (District) had violated RSA 273-A:5, I (a)(to restrain, coerce or otherwise interfere with its employees in the exercise of the rights conferred by this chapter), (e)(to refuse to negotiate in good faith with the exclusive representative of a bargaining unit...), and (g)(to fail to comply with this chapter or any rule adopted under this chapter). The Association alleges, among other things, that the parties have been engaged in protracted negotiations on a successor collective bargaining agreement (CBA) between October, 2017 and January, 2018. The parties met four times and exchanged proposals, after which the impasse was declared and the parties proceeded to mediation in December, 2018, which was ultimately unsuccessful. During the

mediation stage of negotiations, and five days prior to the deadline to send an agreement to the Keene voters for approval, the District presented a proposal, titled "Final and Best Offer," which contained approximately 3.9% salary increase offer ("3.9%, 2.9%, 2.9%, 2.9%") and which included the language making the Board's salary proposal contingent on there being no future impact bargaining over schedule changes. According to the Association, it suggested a meeting with the District to attempt to reach an agreement and discuss concerns over the District's "final and best offer" but the District refused to meet with the Association if the "final and best offer" was not accepted. In substance, the Association claims that the District improperly combined a proposal addressing a mandatory subject of bargaining (wages) with a non-mandatory subject of bargaining (the Association's waiver of its right to impact bargain), and that the District improperly refused to continue negotiations on a mandatory subject of bargaining (wages). The Association argues that the District's actions constitute an unfair labor practice. The Association requests that the PELRB find that the manner in which the District presented and maintained its "final and best offer" and the District's refusal to meet with the Association constitute a violation of RSA 273-A:5, 1 (a), (e), and (g).

The District denies the charge and asserts that, from the beginning of negotiations on a successor CBA, the District conditioned a higher percentage of pay raise ("3.9%, 2.9%, 2.9%") on the Association's acceptance of the impact bargaining waiver language (which would allow the District to change the class schedule without bargaining over the impact of the changes) and that the higher pay raise was offered to compensate the employees upfront for any potential impact any future schedule changes might cause. The District denies that it refused to continue to negotiate with the Association and claims that it offered a second alternative of a lower percentage of pay increase ("2.9%, 2.0%, 2.0%") without the impact bargaining waiver language. The District requests that the PELRB find that the District has not committed an unfair

labor practice, deny the remedies requested by the Association, and require the Association to reimburse the District for its attorney's fees for responding to this charge.

Issues for Determination by the Board.

Whether the District violated 273-A:5, I (a), (e), and/or (g) as charged by the Association.

Witnesses and Exhibits

As outlined in the parties' Pre-Hearing Worksheets. Both parties reserve the right to amend their lists of witnesses and exhibits in conformity with Pub 203.01. It is understood that each party may rely on the representations of the other party that witnesses and exhibits appearing on their respective lists will be available at the hearing.

Decision

1. "Parties" means the Association, the District or their counsel/representative appearing in the case. The parties shall simultaneously copy each other electronically on all filings submitted in these proceedings.
2. At the pre-hearing conference, the parties discussed a possibility of continuing the proceedings in this case to allow them additional time to resolve the dispute. Any motion to continue proceedings shall be filed on or before **July 10, 2018**.
3. The parties shall exchange and file a statement of stipulated facts and their final witness and exhibit lists no later than **July 23, 2018**. A statement of stipulated facts shall contain a timeline of events set forth in the parties' pleadings.
4. The requirement that the parties file copies of proposed exhibits prior to the date of hearing is suspended. The parties shall not file, either electronically or via mail, proposed exhibits prior to the day of hearing. The parties shall pre-mark each exhibit by placing identifying markers in the upper right corner of each exhibit, if possible, and bring an


original and five copies of each exhibit to the hearing. To facilitate access to a particular exhibit, the parties shall use tabs to separate exhibits.

Hearing

Unless otherwise ordered as a result of the filing of any subsequent motion, the hearing in this case will be held on **August 2, 2018 @ 8:30 a.m.**, at the offices of the PELRB in Concord. The time set aside for this hearing is 4 hours. If either party believes that additional time is required, a written notice of the need for additional time shall be filed with the PELRB at least ten days prior to the date of hearing.

So ordered.

Date: 6/29/2018



Karina A. Lange, Esq.
Staff Counsel/Hearing Officer

Distribution: Lauren Snow Chadwick, Esq.
Matthew Upton, Esq.